BUSINESS ASSOCIATIONS

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During the survey period, Act 195[1] was the only statute passed concerning this field. Act 195 in effect makes it unlawful for a bank or company to own, control, vote or hold 15% or more of the voting stock of more than two banks. A bank holding company as defined in the Act means a company which directly or indirectly owns, controls or holds the power to vote 15% or more of the voting stock of each of two or more banks. The Act prohibits a company from owning or controlling either directly or indirectly more than 15% of the voting stock of each of two or more banks or of a holding company which is defined as above. Act 195 permits banks and companies to continue holding and voting stock which they held and owned on the effective date of this Act. The Act further excepts from its coverage a holding company which is holding such stock in a fiduciary capacity where such stock is not held for the benefit of another company or for the benefit of a majority of stockholders of such bank.

The cases decided during this survey period by the appellate courts are limited both in number and scope. In the case of *Wienburg v. Lastinger*,[2] the plaintiff obtained a judgment against C. N. Lastinger, D/B/A as C&C Store, and attempted to levy on the property of the store. The court of appeals held such judgment to be against C. N. Lastinger individually and not as a partner and therefore, an execution issued on such judgment subjected to sale the personal property of C. N. Lastinger and not partnership property.

In *Southern Cotton Oil Co. v. Duskin*,[3] the seller of merchandise brought action against an alleged partnership composed of husband and wife to recover the amount of checks which had been given seller for merchandise sold to the alleged partnership, the checks having been returned because of insufficient funds. The plaintiff contended that the husband and wife were promoters of a corporation and began business before the corporation was organized and there-

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1. Ga. Laws, 1956, p. 309.
2. 92 Ga. App. 407, 88 S.E.2d 527 (1955).
3. 92 Ga. App. 288, 88 S.E.2d 421 (1955).

fore, liable as partners. The court held that merely participating in the signing and filing of articles of incorporation would not render one liable as a partner, if the one sought to be held has not participated in the business or held himself out as a partner. In this case, the court allowed evidence to be introduced to show that the wife, in signing a note with her husband, was signing as an individual and not as a partner and further that the wife had taken no part in the business as a partner, nor held herself out as a partner and therefore was not liable in such an action brought against the alleged partnership.

In the case of *Armed Forces Service Company, Inc. v. Petree*[4] petitioner sought an injunction to prevent the defendant from operating and doing business under its corporate name, alleging in the petition that defendant had no organization under its charter. The court held that the petition failed to set out a cause of action as alleged because plaintiff had therein alleged that defendant had no organization under its charter, therefore, as a corporation can act only through and by its duly authorized officers, it was impossible for the defendant to have injured plaintiff, and mere apprehension of injury is not ground to enjoin the apprehended act.

Although the case of *Grading, Inc. v. Cook*[5] will probably be covered in the article on procedure, it is briefly covered here as a point of interest in this field. In this case, the defendant corporation filed traverse to service alleging that the person served was not an officer or agent of the corporation. The return of service read. "Georgia, DeKalb County: Served the defendant, Grading, Inc., a corporation by serving C. C. Pettett, Engineer, by leaving a copy of the within writ and process with him personally at the office and place of business of said corporation, in DeKalb County, Georgia." The court of appeals stated that there are two methods of service on a corporation doing business in Georgia as follows: (1) by serving an officer or agent of the corporation or (2) by leaving a copy of the process at the office and place of doing business of the corporation. The court held that in this case, the latter of the two methods had in fact been used, and that the portion of the return of service stating that process had been left with the Engineer was merely surplusage which would not invalidate the service as "notorious service".

The case of *Fulton National Bank v. Didschuneit*[6] dealt primarily with a negotiable instruments problem, but will be briefly mentioned

4. 211 Ga. 867, 89 S.E.2d 485 (1955).
5. 93 Ga. App. 68, 91 S.E.2d 129 (1955).
6. 92 Ga. App. 527, 88 S.E.2d 853 (1955).

here on the partnership aspect of the case. In this case, a check had been drawn payable to the order of A and B. Party A endorsed the check and deposited the proceeds to its account. The plaintiff-drawer brought action against the drawee-bank, which defended by contending that the payees, A and B, were joint-adventurers, and as such came within the provisions of the negotiable instrument law permitting a partner to endorse negotiable instruments on behalf of the partnership. The court of appeals agreed that the general laws of partnership are applicable to joint-adventurers, but held further that decisions so holding must be construed in pari materia with the statutory requirement[7] that a negotiable instrument payable to persons jointly must be endorsed by them all unless they are partners, therefore, both joint-adventurers must endorse.

7. GA. CODE § 14-412 (1933).